THE HIGH COURT OF SIKKIM : GANGTOK

M.A.C. APPEAL NO.2 OF 2004

(Arising out of the Orders dated 6th February, 2004 and 27th February, 2004 passed by Mr. S. W. Lepcha, Member, Motor Accident Claims Tribunal, East & North Sikkim, Gangtok in M.A.C.T. Case Nos.26 and 23 of 2003)

United India Insurance Company Ltd.,
Represented by and through its
Divisional Manager,
Bharat Bhawan,
P.O. Siliguri,
West Bengal. **..... Appellant**

versus

1. Mr. Chandi Rai,
S/o Late K. B. Rai,
R/o Sakyong Busty,
P.O. Kalimpong,
Dist. Darjeeling,
West Bengal,
At present - Sichey Busty,
P.O. & P.S. Gangtok,
East Sikkim.

2. Mr. Tenzing Chopel Bhutia,
S/o Late Thendup Dorjee Bhutia,
R/o Reshi Busty,
P.O. & P.S. Rhenock,
East Sikkim. **..... Respondents**

AND

M.A.C. APPEAL NO.3 OF 2004

National Insurance Company Ltd.,
Represented by and through its
Branch Manager,
Gangtok Branch,
National Highway,
P.O. & P.S. Gagntok,
East Sikkim. **..... Appellant**

versus

1. Mr. Bijay Sharma,
S/o Mr. Jhari Sharma,
R/o Golitar Busty,
P.O. & P.S. Singtam,
East Sikkim.

2. Mr. S. T. Lepcha,
S/o Late D. D. Lepcha,
R/o 5th Mile Tadong,
P.O. Tadong,
P.S. Ranipool,
East Sikkim. ..... **Respondents**

For the appellants : Mr. A. K. Upadhyaya, Advocate.

For the respondent no.1 : Mr. N. Rai assisted with Ms. Jyoti Kharka, Advocates.

For the respondent no.2 : None present.

PRESENT: THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 8th April, 2005.

DATE OF JUDGMENT : 26TH MAY, 2005.

J U D G M E N T

A. P. Subba, J.

Since both these appeals involve common question of law about maintainability of the appeals filed by the Insurance Company under section 173 of the Motor Vehicles Act, 1988 without complying with the provisions of section 170 of the same Act they are heard together and are disposed of by this common judgment.

2. The M.A.C. Appeal no.2 of 2004 filed by the United India Insurance Company Limited is directed against the Order dated 6th February, 2004 passed by the Motor Accident Claims

Tribunal, East and North, Gangtok in M.A.C.T. Case no.26 of 2003 granting a sum of Rs.2,21,800/- as compensation in favour of the claimant who is respondent no.1 herein and the M.A.C. Appeal no. 3 of 2004 filed by the National Insurance Company Limited is directed against the Order dated 27th February, 2004 passed by the same Motor Accident Claims Tribunal, East and North, Gangtok in M.A.C.T. Case no.23 of 2003 granting a sum of Rs.1,77,000/- as compensation in favour of the claimant who is respondent no.1, herein.

3. The brief facts of the M.A.C. Appeal no.2 of 2004 are that the deceased late Subhas Rai was employed by the respondent no.2 as driver of his vehicle bearing no.SK-04/3933. On 6th May, 2002, the deceased who was on duty in the said vehicle sustained severe injuries on his head and spine in an accident that occurred at a place called Sawney Busty, East Sikkim when the vehicle was on its way from Rhenock to Gangtok and was being driven by its former driver one Dawa Bhutia. The deceased was immediately hospitalised for medical treatment following the accident. However, despite the medical treatment given to the deceased in hospitals at Kalimpong and Siliguri in West Bengal he succumbed to his injuries after 3 months. On his demise, the respondent no.1 who is the father of the deceased filed claim of Rs.7,48,800/- as compensation before the M.A.C.T., East and North, Gangtok against the present appellant who is the insurer and one Mr. Tenzing Chopel Bhutia, son of late Thendup Dorjee Bhutia who is the owner of

the vehicle involved in the accident. The present appellant who was respondent no.1 before the Tribunal filed written objection and denied any liability contending that there was neither any statutory liability nor contractual obligation cast upon them to pay any compensation to the respondent no.1 or to indemnify the owner of the vehicle for payment of any compensation. It was also contended that the claim petition suffered from non-disclosure of cause of action and also for non-joinder and mis-joinder of necessary parties.

The owner of the vehicle who was respondent no.2 therein contested the claim without filing any written objection. He contended that as he had insured his vehicle with the United India Insurance Company the appellant herein, the claim for compensation was not maintainable against him.

The Tribunal on hearing the parties and on perusal of the materials on record, awarded total compensation of Rs.2,21,800/- to the claimant vide the impugned award dated 6th February, 2004 directing the Insurance Company Ltd. the appellant herein to make the payments.

4. The brief facts of the M.A.C. Appeal no.3 of 2004 are that the deceased Ukash Sharma, aged about $8^1/_2$ years, son of the claimant respondent no.1 herein was ran over and injured by a speeding truck at a place near M.P. Check Post at Bardang, East Sikkim on the National Highway at about 3 p.m. on 2nd April, 2002. The respondent no.1 took his injured son (the deceased) to different hospitals for medical treatment incurring

heavy expenses but all in vein. Despite all the medical treatment being given to him, the deceased succumbed to his injuries in course of his treatment in the Medical College at Patna, Bihar on the 11th day of his treatment. On his demise, the respondent no.1 the father of the deceased filed claim of Rs.7,04,915/- as compensation before the M.A.C.T., East and North, Gangtok against the Insurance Company, the present appellant and one Mr. S. T. Lepcha, son of late D. D. Lepcha, the owner of the vehicle involved in the accident. Both the respondents filed written objections. The appellant who was the respondent no.1 denied any liability contending that there was neither any statutory liability nor any contractual obligation on their part to pay the compensation to the respondent no.1 or to indemnify the owner of the vehicle for payment of any compensation. It was also stated that the claim petition suffered from non-disclosure of cause of action and also for non-joinder and mis-joinder of necessary parties. The respondent no.2, the owner of the vehicle contended that as he had insured his vehicle with the National Insurance Company, the appellant herein, the claim for compensation was not maintainable against him.

The Tribunal on hearing the parties and on perusal of the materials on record awarded total compensation of Rs.1,77,000/- to the claimant vide the impugned award.

Being aggrieved by the above said impugned awards, the appellants filed the present appeals before this Court which have been registered as M.A.C. Appeal nos.2 and 3 of 2004.

5. In M.A.C. Appeal no.2 of 2004, it has been contended before this Court that the award passed by the learned Tribunal was contrary to law being against the weight of evidence on record, that since the deceased died after 3 months of the date of accident the cause of death of the deceased was not the vehicle accident as alleged. It was also contended that the claimant had failed to establish rash and negligent driving on the part of the driver at the time of the accident and that the learned Tribunal had erroneously followed the second schedule of the Motor Vehicles Act, 1988 in awarding the compensation.

6. In M.A.C. Appeal no.3 of 2004, it has been similarly contended that the award passed by the learned Tribunal was contrary to law being against the weight of evidence on record, that the cause of death of the deceased was not the vehicle accident as alleged as the deceased died after 7 months of the date of accident. It was also contended that the claimant had failed to establish rash and negligent driving on the part of the driver at the time of the accident and that the learned Tribunal had erroneously followed the second schedule of the Motor Vehicles Act, 1988 in awarding the compensation. It was further contended that the item of the award on transportation charges amounting to Rs.3,000/-, extra nourishment amounting to Rs.5,000/- and damages of clothing and articles amounting to

Rs.4,000/- were not covered by the second schedule of the Motor Vehicles Act and therefore the impugned award was bad to that extent.

7. Mr. A. K. Upadhyaya, learned counsel for the appellants and Mr. N. Rai assisted by Ms. Jyoti Kharga for the respondent no.1 were heard. Mr. Tenzing Chopel Bhutia, the respondent no.2 in M.A.C. Appeal no.2 of 2004 and Mr. S. T. Lepcha, the respondent no.2 in M.A.C. Appeal no.3 of 2004 who are the owners of the vehicle involved in the accident remained absent despite service and the matter was heard in their absence.

8. At the very outset of the hearing of both the appeals, Mr. N. Rai, learned counsel for the respondent no.1 made a preliminary submission questioning the maintainability of these appeals. It was his submission that the present appellant had not moved the Tribunal under section 170 of the Motor Vehicles Act and no specific order was made by the Tribunal in writing permitting the insurer to avail grounds of appeal which are available to an insured or any person and as such, it was not permissible for the present appellants who are the insurers to file the present appeals questioning the quantum of compensation as well as the finding on merit. The submission advanced by Mr. Upadhyaya in reply is that it was open to the appellant who are the insurers to come in appeals before this Court as the insurers were parties in the proceedings before the Tribunal. It was also his submission that it was equally open to the insurers to raise

any of the grounds as available to the insured and as such, the appeals are maintainable.

9. It is clear from the above rival contentions advanced by the learned counsel for the parties that the short common question of law that arises in both the appeals is whether the present appeals filed by the Insurance Companies without obtaining the permission of the Tribunal under section 170 of the Motor Vehicles Act, 1988 to contest the proceedings on merits are maintainable.

10. Admittedly, no specific order was made under section 170 of the Motor Vehicles Act by the Tribunal permitting the insurer to contest the proceedings on merits. It transpires from the record that the insurers were impleaded as parties in the proceedings before the Tribunal by the claimants themselves and that is how the Insurance Companies came to be the parties in the proceedings before the Tribunal.

11. Shri N. Rai, learned counsel for the respondent no.1 in support of his contention that such appeals filed by the Insurance Companies without complying with the requirements of section 170 of the Motor Vehicles Act, 1988 were not maintainable relied on the decision of the Hon'ble Supreme Court in Shankarayya vs. United India Insurance Co. Ltd. and another reported in AIR 1998 SC 2968. In this decision the Hon'ble Supreme Court after referring to the provisions of section 170 of the Motor Vehicles Act held as follows:-

> "4. It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed the Insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No.1 – Insurance Company in the Claim Petition but that was done with a view to thrust the statutory liability on the Insurance company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, respondent No.1 – Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal." [emphasis added]

The above Division Bench decision of the Hon'ble Supreme Court came to be approved by a larger Bench constituted in National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others reported in AIR 2002 SC 3350. The Hon'ble Supreme Court after referring to the above Shankarayya case (supra) and several other decisions held in paragraph 26 of the judgment as follows:-

> **"26.** For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for the reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or the person against whom the claim has been made.

> Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 73 are part of one Scheme and if we give any different interpretation to Section 172 of the 1988 Act, the same would go contrary to the scheme and object of the Act." [emphasis added]

In Oriental Insurance Co. Ltd. vs. Manjulaben Jayantbhai Patel and others AIR 2003 Gujarat 327 the High Court of Gujarat was faced with similar question of law. The learned Court after referring to and relying upon the above decision of the Hon'ble Supreme Court came to the conclusion that an appeal filed by the Insurance Company without complying with the provisions of section 170 of the Motor Vehicles Act, 1988 was not maintainable. Placing reliance on the relevant observations made and following the guidelines laid down by the Court in the above decision of the Hon'ble Supreme Court, the High Court observed at paragraph 11 of the judgment as follows:-

> "11. The aforesaid principles laid down by the Apex Court after analysing the scheme of the Motor Vehicles Act, 1939 as well as the scheme of the Motor Vehicles Act, 1988 and several decisions make it abundantly clear beyond any pale of controversy that an Insurance Company cannot file an appeal against the award of the Tribunal for challenging the findings of negligence and on quantum of compensations, unless the Insurance Company had

> made an application before the Tribunal under Section 170 of the Motor Vehicles Act, 1988 and a specific order was made by the Tribunal in writing permitting the insurer to avail the grounds available to an insured or any other person against whom the claim has been made.
>
> The decision of the larger Bench in national Insurance Co. Ltd. v. Nicolletta Rohtagi (AIR 2002 SC 3350) (supra) has completely concluded the controversy and it is not open to his Court to circumvent the said binding decision by culling out any implied permission of the Tribunal in favour of the Insurance Company as is sought to be contended by the learned counsel for the appellant-Insurance Company." [emphasis added]

12. Bearing in mind the position of law as enunciated in the above cases, we may now take up for consideration the submission made by Mr. Upadhyaya with regard to the maintainability of the appeals in question.

It is the submission of Mr. Upadhyaya that even if there is any bar for the Insurance Company to come in appeal on account of its failure to obtain permission under section 170 of the Motor Vehicles Act from the learned Tribunal it should be open to the Insurance Company to come in appeal particularly in a situation where the award of the Tribunal is unfair and unjust. Even though Mr. Upadhyaya did not make reference to or rely on any decision in support of his submission, it is noticed that such a question came up before the Hon'ble Supreme Court for consideration in United India Insurance Co. Ltd. vs. Bhushan Sachdeva and others AIR 2002 SC 662. It was held by the Hon'ble Supreme Court in that case that so long as the insured has not challenged the award passed against him and so long as the liability to pay compensation would only fall on the Insurance Company it is

inequitable to deny a remedy of appeal to the Insurance Company. The ratio of the decision as may be apparent from the judgment was that the Nationalised Insurance Companies of India are holding public money and they are accountable to the public money for every pie of it. Therefore, if it is held that no Insurance Company should feel aggrieved even if the award is seemingly unjust and that such awarded amount should go out with the public fund it is public interest, which suffers. If the Insurance Company has reason to believe that the award was obtained fraudulently which fact was not known to the insured, the Insurance Company must feel aggrieved. Any interpretation denying such aggrieved Insurance Company the opportunity to seek the legal remedy should not be adopted unless there is a statutory compulsion. It was accordingly observed in paragraph 9 of the judgment that "there is nothing in section 173 or in the other relevant provisions of the Act which debars the Insurance Company to resort to the remedy of appeal when it knows that the award is unjust".

13. Viewed in the light of the above interpretation placed on section 173 it might be noted that the submission made by Mr. Upadhyaya does not seem to be devoid of substance but at the same time we must hasten to add that the above interpretation of the law no longer holds good. The approach adopted earlier in such cases has undergone a change as may be noticed hereafter. A larger Bench of the Hon'ble Supreme Court constituted in Nicolletta Rohtagi's case (supra) did not find favour with the ratio

of the above decision and the same was over-ruled. It is noticeable that the emphasis has now changed from public money to the contractual liability and the welfare of the insured. As already quoted above, it has been held in paragraph 26 that "motor vehicle accident claim is a tortuous claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in section 149(2) of the Act or where the condition precedent specified in section 170 is satisfied". It was accordingly observed in paragraph 29 of the judgment as follows:-

> "29. For the aforesaid reasons, as well as that the learned Judges in United India Insurance Co. Ltd. (supra) have failed to notice the limited grounds available to an insurer under Section 149(2) of the Act, we are of the view that the decision in United India Insurance (supra) does not lay down the correct view of law."

In this context, it is worthwhile also to reproduce paragraph 27 of the same judgment as follows:-

> "27. This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149(2) of 1988 Act limits the insurer's appeal on those enumerated

grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in Section 149(2) of the 1988 Act. The view taken in United India Insurance Co. Ltd. v. Bhushan Sachdeva, (supra) that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no Court or tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in United India Insurance (supra) that since the insurance companies are nationalised and are dealing with public money/fund and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of the Parliament behind enacting Chapter XI of 1988 Act. The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependant of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. In Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, 1987 (2) SCC 654, it was observed thus:

"In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant

> hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the light of the aforesaid perspective."

The above being the present position of law it follows that the submission made by Mr. Upadhyaya that an insurer can come in appeal and challenge finding on merit even in absence of permission in terms of section 170 cannot be accepted. Accordingly, it must be held that the present appeals are not maintainable and the same are liable to be dismissed.

14. Even though the above is sufficient to dispose of these appeals, it is desirable to deal with some further points urged by Mr. Upadhayay before coming to the final conclusion.

The first of the further submissions made by Mr. Upadhyaya is to the effect that in M.A.C. Appeal no.1 of 2004 National Insurance Company Ltd. vs. Kamala Rai and others decided by this Court on 21st March, 2005, the Insurance Company who was the appellant was allowed to challenge finding on merit even when there was no compliance with the provision of section 170 and there was no written permission obtained by the Insurance Company and as such, the grounds raised in the present appeals, being similar to the ones raised in the aforesaid appeal the present appellant cannot be precluded from raising the same points in these appeals as well.

No doubt, a perusal of the judgments/orders of the related case shows that the appellant in the said appeal was allowed to challenge the finding on merit but at the same time it transpires

that the question relating to the necessity of obtaining the written permission of the Tribunal under Section 170 of the Motor Vehicles Act to contest the matter on the grounds available to the insured was not raised and argued nor the decisions, namely, Shankarayya's case (supra) and the later decision of the larger Bench in Nicolletta Rohtagi's case (supra) were cited as authority on the issue. As a consequence there was no occasion for the Court to consider the issue. In view of this, the decision rendered in the above M.A.C. Appeal no.1 of 2004 must be treated as a decision given in *per incuriam*.

The next submission made by Mr. Upadhyaya relates to the compensation awarded under the heads of transportation, extra nourishment and damages of clothing and articles in the impugned award in M.A.C. Appeal no. 3 of 2004. The point urged by Mr. Upadhyaya in this regard is that the learned Tribunal had blindly followed the second schedule of the Motor Vehicles Act, 1988 in awarding the total amount of compensation. It is contended that even if the Tribunal is right in following the second schedule the items of compensation awarded under the above heads, namely, transportation, extra nourishment and damages of clothing and articles fall outside the scope of the second schedule and are thus not permissible.

The impugned award shows that the learned Tribunal has awarded Rs.3,000/- towards transportation charges, Rs.5,000/- towards extra nourishment and Rs.4,000/- towards damages of

clothing and articles etc. A perusal of the second schedule would show that these heads do not find place in the schedule.

It was further pointed out by Mr. Upadhyaya that in the other impugned award passed by the same Tribunal which is also under challenge in the other M.A.C. Appeal no.2 of 2004 no compensation has been awarded on these heads. This, according to Mr. Upadhyaya, has led to uncertainty and lack of uniformity in the awards that have been passed by the same Tribunal. Therefore, it is the further submission of Mr. Upadhyaya that the impugned award in M.A.C. Appeal no.3 of 2004 needs to be modified so far as it relates to the extra compensation not falling within any of the heads of schedule II are concerned.

Mr. Upadhyaya further contended that even though the Insurance Company cannot challenge the impugned award on merit, the errors pointed out above are apparent on the face of the record and as such the same may be set right in exercise of inherent power of the Court so as to ensure certainty and uniformity in the matter of compensation to be awarded in M.A.C.T. cases. The submission of Mr. N. Rai, learned counsel for the respondent no.1 in this regard is that the heads under which these items of compensation have been given find place in the Sikkim Motor Vehicles Rules framed by the State Government under the Motor Vehicles Act and as such there is no irregularity whatsoever in granting compensation on these heads as well.

There is no doubt that certainty and uniformity of awards that may be passed by the claims Tribunal is what has been exphasised in all the guidelines laid down by the Apex Court and other Courts from time to time. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in U.P.S.R.T.C. and others vs. Trilok Chandra and others reported in (1996) 4 SCC 362, United India Insurance Co. Ltd. and others vs. Patricia Jean Mahajan and others (2002) 6 SCC 281 and also the decision of the Karnataka High Court in Gulam Khader and another vs. United India Insurance Co. Limited and another 2001(1) T.A.C. 752 (Kant.). What emerges from the above decisions is that Courts must adhere to the well-settled principles and guidelines so as to maintain uniformity and certainty of the awards made all over the country.

It may be noted that question of maintaining certainty and uniformity in the awards came up for consideration in M.A.C. Appeal no.1 of 2005 Mr. Gopi Krishna Kakrania and another vs. Mr. Mahendra Pradhan and another and M.A.C. Appeal no.2 of 2005 Mr. Gopi Krishna Kakrania and another vs. Mr. Mahendra Pradhan and another recently decided by this Court by a common judgment. Relying on the guidelines laid by the Hon'ble Supreme Court in the above referred decisions this Court emphasised the need and importance of adhering to the schedule II of the Motor Vehicles Act and the guidelines laid down by the Hon'ble Supreme Court so that uniformity and

certainty of awards to be passed by the Tribunals can be ensured.

In view of above, I am of the opinion that an interference to the limited extent of setting aside that part of the award which relates to the extra head of compensation in the impugned award in M.A.C. Appeal no. 3 of 2004 is called for with a view to maintain uniformity and certainty in the matter of grant of compensation. Accordingly, the amount of award made by the Tribunal on the above heads is set aside and the compensation payable is determined at Rs.1,65,000/- thereby modifying the impugned award in M.A.C. Appeal no.3 of 2004. On deduction of the interim relief award of Rs.50,000/- already received by the claimant from this amount the balance amount comes to Rs.1,15,000/-.

Finally, Mr. Upadhyaya drew the attention of the Court to the decision of the Hon'ble Supreme Court in Pramod Kumar Agrawal and another vs. Mushtari Begum (Smt.) and others (2004) 8 SCC 667 and submitted that in this case the Hon'ble Supreme Court had directed the insurer to pay the quantum of compensation fixed by the Tribunal to the respondent claimant, i.e., the Insurance Company and to recover the same from the owner for which the insurer shall not be required to file the suit and the insurer may initiate a proceeding before the executing Court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour

of the insurer. He further submitted that a similar direction, if given in the present case will serve the interest of justice in the facts and circumstances of the case.

15. A perusal of the above judgment shows that the said direction was given following the earlier decision of the Hon'ble Supreme Court rendered in National Insurance Co. Ltd. vs. Baljit Kaur and others (2004) 2 SCC 1. Paragraph 12 of the judgment which contains the details of the direction given is as follows:-

> "12. Therefore, while upholding the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur case* that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle i.e. Appellant 1 shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle i.e. Appellant 1 shall make payment to the insurer. In case there is any default, it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured (Appellant 1)." [emphasis added]

It may however be noticed that the facts of the above two cases go to show that the questions that came up for consideration were entirely different. In Baljit Kaur's case

(supra) the question that came up for consideration was whether an Insurance Policy in respect of a goods vehicles would also cover gratuitous passengers in view of the legislative amendment in 1994 to section 147 of the Motor Vehicles Act. The Hon'ble Supreme Court after referring to several previous decisions on the point held that the effect of the provision contained in section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same despite the amendment of 1994. It was accordingly held that the owner of the vehicle and not the insurer was liable and consequently the Insurance Company was directed to satisfy the awarded amount and recover the same from the owner of the vehicle. The question that came up for consideration in Mushtari Begum's case (supra) was also whether the insurer was liable to pay compensation in respect of passenger carried in goods vehicle. It was found that the vehicle which was a goods vehicle was not insured for carrying passenger. Accordingly, it was held in the light of the ruling in the above referred Baljit Kaur's case (supra) that it was the owner of the vehicle who was liable to make the payment of compensation and the Insurance Company was not liable. It was in these circumstances that the direction that the Insurance Company will pay the compensation to the respondent claimants and recover the same from the owner of the vehicle was given keeping in view the object and intention of Parliament behind enacting chapter XI of the Act.

16. As it becomes clear from the above, the directions in question were given on the basis of the finding that the Insurer was not liable to make payments of compensation but it was the owner of the vehicle who was so liable. It is, therefore, evident that facts of the present cases are not similar to the facts of the above two cases. In the present cases, it may be noticed that the learned Tribunal has found the Insurance Companies liable to make the compensation in terms of Insurance Policy and has directed the Insurance Companies to make the payment of the compensation. In view of this a direction in the similar lines as prayed for by Mr. Upadhyaya would be uncalled for and unjustified in so far as such a direction, if given in the present case, will have the effect of shifting the liability already fixed on the insurer by the learned Tribunal. Further, as already held above, the appellants in the present appeals are precluded from raising any ground on merit in absence of a written permission to be obtained by the insurer in terms of section 170 of the Motor Vehicles Act. Therefore, the submission of Mr. Upadhyaya that a similar direction, if given in the present cases will serve the interest of justice cannot be accepted in the present circumstances.

17. In the result, the M.A.C. Appeal no. 3 of 2004 is allowed in part and that part of the award which relates to compensation on heads not covered by schedule II are set aside as indicated above.

The M.A.C. Appeal no.2 of 2004 is dismissed. There shall be no orders as to costs.

(A. P. Subba)
Judge
26.05.2005